

# **EXHIBIT “B”**

HIGHLY CONFIDENTIAL DEPOSITION OF GREG HAMILTON  
CONDUCTED ON THURSDAY, JANUARY 21, 2010

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE )  
PRICE LITIGATION )  
\_\_\_\_\_  
THIS DOCUMENT RELATES TO:  
United States ex rel. ) Master File No.  
Linnette Sun and Greg ) 1:01-CV-12257-PBS  
Hamilton, Relators )  
\_\_\_\_\_  
v. )  
Baxter Hemoglobin ) Sub-Category Case  
Therapeutics and Baxter ) No. 1:08-CV-11200  
International Inc. )

HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Deposition of GREG HAMILTON, taken before  
MARGARET A. BACHNER, CSR, RMR, CRR, and Notary Public,  
pursuant to the Federal Rules of Civil Procedure for  
the United States District Courts pertaining to the  
taking of depositions for the purpose of discovery, at  
Suite 600, 300 North LaSalle Street, Chicago,  
Illinois, on the 21st day of January, A.D. 2010, at  
10:32 a.m.

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1 (Whereupon, the deposition  
2 resumed at 1:36 p.m.)  
3 GREG HAMILTON,  
4 called as a witness herein, having been previously  
5 duly sworn and having testified, was examined and  
6 testified further as follows:

## **EXAMINATION (Resumed)**

8 BY MR. JACKSON:

9                   Q.       Mr. Hamilton, can I refer you back to  
10                  Deposition Exhibit 6, your Declaration, please?

11 A. Yes.

12 Q. In paragraph 2, the final sentence, you  
13 refer to, "Those meetings specifically concerned the  
14 pricing of several of the Baxter products discussed in  
15 the Complaint."

16 Do you see that?

17 A. Yes, I do.

18 Q. What pricing were you referring to?

19                  A.        The ones -- and again, pricing is a big  
20                  subject. We had discussed -- let me read the  
21                  paragraph first.

22 (Short interruption.)

23 BY THE WITNESS:

24                   A.       Again, "pricing" is kind of a big word.  
25       So, when I refer to "pricing," I'm referring to the

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1 price that Baxter was selling to me as a client.

2 BY MR. JACKSON:

3 Q. At Express Scripts?

4 A. That is correct. So, of course, some of  
5 the stuff would have been basically, you know,  
6 contract negotiations. Certainly part of -- you know,  
7 with every price of what a customer or a manufacturer  
8 sells their drug for there's also the accompanying AWP  
9 that goes along with that.

10 In addition to that, we also discussed on  
11 several occasions what's called PHS, otherwise known  
12 as 340B pricing.

13 Q. All right. So, let's --I understand when  
14 you refer to some of those communications referred to  
15 the price to Express Scripts. What was your  
16 communication with Larry Guiheen or Peter O'Malley  
17 regarding AWP?

18 A. I actually -- I mean, I can't tell you any  
19 specific time and exactly what we talked about.

20 Q. Okay. With regard to the PHS, the 340B  
21 pricing, can you tell me what you discussed with these  
22 gentlemen as you reference in paragraph 2?

23 A. I can. There was one particular time, and  
24 I can't tell you what the date was, but it was one of  
25 the meetings I had at Baxter headquarters.

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1                   Pete O'Malley had asked me to come out and  
2 discuss contracting issues. He brought into the room  
3 people that he identified as Baxter contracting --  
4 people who work in their Contracting Department. And  
5 he asked me to go through and explain to them how 340B  
6 pricing worked, how it was calculated and  
7 administered. And I did that.

8                   Q. Now, is any of the information that took  
9 place in that meeting regarding 340B the subject of  
10 any of your claims in this Complaint that is Exhibit  
11 7?

12                  A. No, not specifically.

13                  Q. In paragraph 4, the first sentence is the  
14 following: "While serving in those positions I  
15 frequently met with Baxter's senior management to  
16 discuss the market for hemophilia products."

17                  Do you see that?

18                  A. Yes, I do.

19                  Q. Do you remember specific conversations you  
20 had with senior management regarding hemophilia  
21 product pricing?

22                  A. Well, --

23                  Q. I'm sorry. The market for hemophilia. You  
24 don't say "pricing" there. You say, "market."

25                  A. Yes. There is one conversation that I do

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1 remember very specifically. I'll address the others  
2 after I address this first one.

3 And that was -- it was when we met with  
4 Larry Guiheen. And this was -- oh, I'm going to guess  
5 this was within six months of Advate's launch. And I  
6 met with Larry at some sort of a trade show. It could  
7 have been NHF. But I do remember it was in an exhibit  
8 hall. I can picture where we were.

9 So, we were in an exhibit hall, and we were  
10 talking about Advate. I expressed to Larry that my  
11 opinion that they had come out with, they'd launched  
12 with too high of a premium for Advate over their other  
13 product and the comparable products, the recombinant  
14 products, and that they came out just too high and  
15 they needed to drop that price.

16 And I felt that his uptake on conversions  
17 from other factor products to Advate was being  
18 inhibited by the extensive or excessive margin. You  
19 know, they were charging too much for it in comparison  
20 to the other drugs.

21 And I remember suggesting, you know, if you  
22 could just drop that 7 or 8 cents or whatever the  
23 number was at the time, I think that you could reduce  
24 the differential to where it's not a deal breaker for  
25 insurance companies and people aren't gonna go, "Wait

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1       a minute. 15 cents a unit times a couple hundred  
2       thousand units a year, prove to me that Advate's that  
3       much better," which, of course, would be a very  
4       difficult thing to do because it's a conceptual issue.

5                   So, I made that point, and I said, "If you  
6       could get it down to where it's, you know, 5 cents, 6  
7       cents, I don't think you'd have the push back and you  
8       could convince the patients, you know, to recommend or  
9       to ask their doctor for a switch and that they could  
10      then get it through the insurance companies."

11                  So, that was one very, very specific  
12      discussion we had on pricing. It was of Advate.

13                  Q.     Do you remember when Advate launched?

14                  A.     Yeah. It was, like, spring of 2003, summer  
15      of 2003, somewhere in there.

16                  Q.     And when you say "launched," do you mean  
17      actually can start making sales?

18                  A.     Yeah. I forgot the approval date, but we  
19      can look that up. I think it was approved in, I don't  
20      know, April, May, something like that. But there  
21      wasn't a great delay from when it was approved to when  
22      it was launched. It was probably, I don't know, two  
23      months at the most.

24                  Q.     Okay. And when you say -- this is my term,  
25      my phrase, "uptake or uptick over its other products,"

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1 did you mean the price that Baxter would sell to the  
2 market over the price it would sell to the market for  
3 Recombinate?

4 A. Yes. The difference -- what I was trying  
5 to point out was that the difference -- Recombinate  
6 was selling for, let's say, 89 cents at the time. And  
7 when they launched Advate, it came out as a buck 15  
8 ballpark. And so, the difference between 89 cents and  
9 \$1.15 was just too great.

10 Q. For what?

11 A. For universal acceptance, for insurance  
12 companies, for payers to say, "Yeah, it's worth it.  
13 I'll pay that much more." Because if they're going to  
14 pay an extra 20 cents a unit and patients are using  
15 anywhere from a hundred thousand to a million units a  
16 year, that turns out to be a lot of dollars. And it  
17 got people's attention.

18 So, the difference was so great -- it's  
19 kind of like pricing that's called the noticeable  
20 difference curve. It was the same thing. It was so  
21 noticeable that it got attention.

22 Had the number been smaller, it would have  
23 passed through without people scrutinizing it and  
24 more -- and patients would have been accepted and  
25 insurance companies wouldn't have even probably given

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1 it a second thought in terms of paying.

2 And so, therefore, they'd be able to  
3 convert patients from current therapies, whether it be  
4 theirs or someone else's, to Advate more rapidly than  
5 what they were doing.

6 Q. Okay. So, from your perspective you did  
7 not believe that the market price of Advate, the new  
8 therapy, that the delta was not justified by the  
9 difference in the products?

10 A. Yes. But let me say justified in the minds  
11 of the people who were actually paying the bill, the  
12 payers, okay? And the delta was so large that it got  
13 their attention. And that was the key. First of all,  
14 it got their attention. The delta was so large that  
15 it jumped out, you know.

16 And all of a sudden the claims were bigger  
17 than they were before and the dollar signs caught  
18 their attention. That brought scrutiny to the  
19 product. And that made people then question is this  
20 new product worth that much more than what the other  
21 one is?

22 And, of course, Baxter was standing up  
23 straight and saying, "Recombinate's a very safe drug  
24 and it treats Factor VIII." And they were saying all  
25 these wonderful things about Recombinate. As a matter

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1       of fact, they were saying the same thing about the  
2       plasma products. Yeah, plasma products are perfectly  
3       safe. Recombinate's perfectly safe.

4               Okay. Why do you want to spend 15, 20,  
5       20-some cents more for another safe product? Does it  
6       treat the bleed any better? Well, no. Well, then,  
7       why this huge premium?

8               And that -- again, the delta was so big  
9       that it was getting insurance companies', what I call  
10      payers, attention, and it was inhibiting their  
11      conversion rate.

12          Q.     Conversion rate, again just to understand,  
13       you mean converting from some other form of factor up  
14       to Advate?

15          A.     Let's not say "form" because then you get  
16       into whether it's Factor VIII or Factor IX.

17          Q.     I don't mean that.

18          A.     I don't, either, but I just want to be  
19       clear. From some competitor, let's say, including  
20       themselves.

21          Q.     Got it. Switching from a previously used  
22       product to Advate?

23          A.     Factor VIII product to Advate, yes.

24          Q.     Okay. I understand.

25               All right. In paragraph 4 the third line

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1 up, fourth line up, it says, "I also made at least  
2 three trips to Baxter's Deerfield, Illinois offices to  
3 meet with Baxter managers to discuss pricing."

4 Now, you've already told me about the 340B  
5 conversation. And that's kind of in the next several  
6 sentences.

7 Do you remember what the other two meetings  
8 were about?

9 A. Not specifically, no.

10 Q. Okay. If you turn to paragraph 6, you  
11 reference it this paragraph 6 of your Declaration that  
12 is Deposition Exhibit 6, you reference a meeting with  
13 Larry Guiheen about Baxter's pricing of Advate.

14 Is this the conversation that you and I  
15 just had about the moving -- what's a good way to  
16 describe the conversation we had? A marketing issue?

17 A. It's pricing and marketing.

18 Q. Okay.

19 A. And yes, that is the conversation I'm  
20 referring to.

21 Q. Okay. Got it.

22 In paragraph 7 you refer to your time at  
23 Express Scripts and Curascript and you talk about how  
24 you, quote, interacted with Baxter's pricing managers,  
25 close quote.

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1                   Do you have any specific memory of pricing  
2 conversations then?

3                   A.     No.

4                   Q.     And in the last sentence of paragraph 7 you  
5 also reference, quote, numerous discussions with them  
6 about pricing strategies.

7                   Do you remember what the subject of those  
8 pricing discussions were in paragraph 7?

9                   A.     I do not remember specific discussions.

10                  (Deposition Exhibit Number 21 was  
11 marked for identification.)

12                  (Document tendered to the  
13 witness.)

14 BY MR. JACKSON:

15                  Q.     Let me show you what's been marked as  
16 Deposition Exhibit 21. Deposition Exhibit 21 is the  
17 Memorandum in Opposition to Baxter International  
18 Inc.'s Motion to Dismiss Relators' Complaint.

19                  Do you see that?

20                  A.     Yes, I do.

21                  Q.     I have a generic question for you, sir. In  
22 the Complaint --

23                  A.     Is this a generic question coming from a  
24 brand manufacturer?

25                  Q.     -- there are repeated allegations, and I'll